

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 01-57090

CONNOLLY NORTH AMERICA, LLC,

Chapter 7

Debtor(s).

Judge Thomas J. Tucker

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**OPINION AND ORDER DENYING SUCCESSOR TRUSTEE'S "EMERGENCY  
MOTION . . . SEEKING AN EX PARTE ORDER AUTHORIZING A LIMITED  
AMENDMENT OF THE [COURT'S DECEMBER 10, 2009] ORDER [, ETC.]"  
(DOCKET # 890)**

This case is before the Court on the "Emergency Motion . . ." (Docket # 890, the "Emergency Motion") which was filed today (Friday, December 11, 2009) at 4:23 p.m. by Bruce French, the Successor Trustee. The Emergency Motion seeks entry of an order, no later than Monday, December 14, 2009, amending the Court's stay order filed December 10, 2009 (Docket # 886) in specified ways.

The Court has carefully (though urgently) considered the Emergency Motion, and concludes that (1) a hearing on the Emergency Motion is not required; and (2) the Emergency Motion should be denied on the terms stated in this Order.

The Court concludes that under the *worst-case* scenario, from Trustee French's perspective, any claim the bankruptcy estate may have or may have had against former Trustee Mark Shapiro's law firm for legal malpractice, of the type referred to in paragraphs 14 and 15 of the Emergency Motion, would not have been barred by the applicable statute of limitations until, at the very earliest, 2 years after February 18, 2005. February 17, 2005 is the date on which the Court filed (and the docket indicates that February 18, 2005 is the date the Court actually *entered*) the order approving the bankruptcy estate's settlement with Curtarsa, reflecting the ruling the Court made at the December 16, 2004 hearing on the settlement motion. Under even a

narrow view of the accrual standard under Michigan law, the statute of limitations did not begin to run on malpractice claims against the Steinberg, Shapiro law firm, relating to any “Lost Claims” against Curtarsa, until the Court filed its settlement order on February 17, 2005, and more likely, until the Court *entered* that Order on February 18, 2005 (Docket # 558). Until that order was entered, the Steinberg, Shapiro law firm cannot be said to have discontinued serving Trustee Shapiro in a professional capacity with respect to claims against Curtarsa, even under a narrow view of Michigan law on when a legal malpractice claim accrues. Assuming such a February 18, 2005 accrual date, the statute of limitations would not have expired on such malpractice claim(s) against the Steinberg, Shapiro law firm until February 18, 2007.

This, in turn, would mean that any breach of fiduciary duty claim against former Trustee Shapiro for his failure to sue his law firm for malpractice, relating to claims against Curtarsa, could not have accrued until February 18, 2007 at the earliest, and therefore the 3-year statute of limitations for such a breach of fiduciary duty claim against former Trustee Shapiro could not expire until, at the earliest, February 18, **2010**.

As a result, there is no rush for this Court to decide whether to make an exception to the current stay order to allow Bruce French, Trustee to file suit against Mark Shapiro, former trustee, relating to this Curtarsa matter. The Emergency Motion therefore will be denied, on the terms stated in this Order below.

Accordingly,

IT IS ORDERED that the Emergency Motion (Docket # 890) is denied.

IT IS FURTHER ORDERED that this Order is without prejudice to the right of Trustee Bruce French to file a non-emergency/non-expedited motion for an amendment to the Court’s December 10, 2009 stay order (Docket # 886) similar to the one sought on an emergency basis in

the Emergency Motion.

**Signed on December 11, 2009**

**/s/ Thomas J. Tucker**  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**